

## IRM PROCEDURAL UPDATE

**DATE: 04/05/2013**

**NUMBER: SBSE-20-0413-0690**

**SUBJECT: First Time Abate Policy Modified, Taxpayers Must Be Current with Filing & Payment Requirements**

**AFFECTED IRM(s)/SUBSECTION(s): 20.1.1.3.6.1**

**CHANGE(s):**

**IRM 20.1.1.3.6.1** – Updated to modify First Time Abate (FTA) policy. Penalty relief under FTA will be limited to those taxpayers that are current with filing and payment requirements.

1. RCA provides an option for penalty relief for the FTF (IRC 6651(a)(1), IRC 6698, & IRC 6699), FTP (IRC 6651(a)(2) & IRC 6651(a)(3)), and/or FTD (IRC 6656) penalties if the taxpayer:
  - a. Has not previously been required to file a return or has no prior penalties (except the Estimated Tax Penalty, TC 17X) for the preceding 3 years on the same MFT (except MFT 30/31, and see the exception for MFTs 01 and 14 in paragraph (5)(f)), and
  - b. Has filed, or filed a valid extension for, all currently required returns and paid, or arranged to pay, any tax due

**EXAMPLE:** Consider the taxpayer current if they have an open installment agreement and are current with their installment payments

**NOTE:** If the taxpayer is not currently in compliance per (1)(b) but all other FTA criteria are met, provide the taxpayer an opportunity to fully comply before considering reasonable cause.

This First-time Abate (FTA) aspect is an Administrative Waiver and does not carry any Oral Statement Authority (OSA) dollar threshold. See IRM 20.1.1.3.6.3 for additional OSA information. Also, FTA carries its own **PRCs** - **018** for non-RCA/manual look-back, or **020** for RCA being used to make the determination. See IRM 20.1.1.3.6.2

2. A penalty assessed and subsequently reversed in full will generally be considered to show compliance for that tax period unless the exception in (5)(c) applies. RCA considers fully reversed penalties in its FTA analysis.
3. The FTA Administrative Waiver can only apply to a single tax period for a given MFT. For example, if a request for penalty relief is being considered for 2 or

more tax periods on the same MFT and the earliest tax period meets FTA criteria, penalty relief based on FTA only applies to the earliest tax period, not all tax periods being considered. Penalty relief for all subsequent tax periods will be based on the showing of reasonable cause (and absence of willful neglect).

4. The reasonable cause explanation provided by the taxpayer will be considered after RCA performs the First-time Abate/Clean Compliance History analysis. If FTA criteria does not apply based on reasons shown in (5) below, then the taxpayer's explanation will be used to determine if reasonable cause penalty relief criteria is met (see Note in paragraph (1)). If the RCA determination is to abate the penalty(s), penalty relief can be granted as appropriate per the RCA conclusion (i.e., Reasonable Cause, Official Disaster Relief area, IRS Error, Statutory and Administrative Waivers). Using the First-time Abate/Clean Compliance History analysis up front was based on a request from HQ Customer Accounts Services.
5. A First Time Abate conclusion **WILL NOT** apply if any of the following criteria applies:
  - a. Any tax period in the prior 3 years, for the same MFT (except MFT 30/31, and see the exception for MFTs 01 and 14 in paragraph (5)(f)), is in TDI Status 02 or 03, or IMF Status 04.
  - b. An unreversed penalty for a significant amount (see *Caution* for an explanation of significant amount) is present (except the ES penalty) on any tax period in the prior 3 years, for the same MFT (except MFT 30/31, and see the exception for MFTs 01 and 14 in paragraph (5)(f)), and a notice was issued showing the assessed penalty(s).

**##**

**NOTE:** A module balance cleared with a TC 606 indicates a notice showing the assessed penalty(s) **was not** issued.

- c. Any penalty reversal or penalty suppression on any tax period in the prior 3 years for the same MFT (except MFT 30/31, and see the exception for MFTs 01 and 14 in paragraph (5)(f)) was input with Penalty Reason Code (PRC) 018, 020, or 021. See Exhibit 20.1.1-2, *Penalty Reason Code Chart*.

**Additional criteria specific to BMF accounts is as follows:**

- d. Any portion of an FTD penalty charged for EFTPS Avoidance. Taxpayers required by law to deposit using EFTPS have received multiple notifications from the Treasury Financial Agent (TFA) and the Electronic Tax Administration (ETA) prior to their required EFTPS start date. Use RCA for normal penalty relief consideration.

**NOTE:** Beginning Jan. 1, 2011, all required deposits must be made by EFTPS, and the TFA/ETA notifications were discontinued. However, this criterion will continue to apply.

- e. A total of four or more FTD Penalty Waiver Codes are present in the taxpayer's three-year penalty history for the same MFT (see the exception for MFTs 01 and 14 in paragraph (5)(f)). Waiver Code 24 is set when the FTD penalty is waived due to a change in deposit frequency. Waiver Code 25 is set when the FTD penalty is waived per IRM 20.1.4.3, *Restrictions on Assessments* criteria. When a Waiver Code applies, the applicable Waiver Code will be shown with the literal "FTD PEN WAIVER CD" on CC BMFOL definer "R." RCA will check the taxpayer's three-year history for the presence of four or more Waiver Codes.
- f. The three-year penalty history for either MFT 01 (Form 941, *Employer's Quarterly Federal Tax Return*,) or MFT 14 (Form 944, *Employer's Annual Federal Tax Return*,) must include a review of both MFT 01 **AND** MFT 14 accounts.

**EXAMPLE:** Taxpayer A files Form 944 for tax year 2010 and is assessed a FTD penalty (TC 186) on the MFT 14 account. For all years prior to tax year 2010, the taxpayer filed Form 941. The MFT 01 account for the 2nd quarter of 2009 (200906) has unreversed FTD, FTF, and FTP penalties; therefore, the taxpayer does not qualify for FTA relief on the MFT 14 account for 2010 (201012).

- 6. When checking the three-year penalty history, RCA does not recognize any module(s) that has moved to the retention register. This should not be a problem when using RCA on current tax periods; however, when using RCA for an older tax period, the employee must manually review any tax period(s) in the three-year penalty history that has gone to the retention register.
- 7. If RCA determines a **First -Time Abate** is applicable, correspondex letters 3502C for BMF FTD penalty relief, or 3503C for IMF FTF and/or FTP penalty relief can be generated through RCA and IDRS. Both letters contain a paragraph automatically selected by RCA informing the taxpayer that the penalty(s) was removed based on their history of compliance. The following is an example of this paragraph:

*We are pleased to inform you that your request to remove the (use applicable penalty, i.e. failure to file, failure to pay, or failure to deposit) penalty(s) has been granted. However, this action has been taken based solely on your compliance history rather than on the information you provided. This type of penalty removal is a one-time consideration available only for a first-time penalty charge. IRS will base decisions on removing any future (failure to file, failure to pay, failure to deposit) penalties on any information you provide that meets reasonable cause criteria. You should receive a notice of penalty adjustment within the next few weeks.*

**NOTE:** Include an explanation that educates the taxpayer how to be compliant in the future.

8. First-time abatement may be considered for FTF (assessed under IRC 6651(a)(1), IRC 6698, or IRC 6699) and/or FTP (IRC 6651(a)(2) & IRC 6651(a)(3)) on all returns (except those listed in a) below). The employee must check the three prior years, and all subsequent periods already due, and document the clean compliance history. If RCA is not used to consider first-time relief and relief is granted, use **PRC 018** when making the adjustment. Notify the taxpayer that the penalty removal was based on their history of compliance rather than on the information they provided (see example paragraph above). Also include an explanation that educates the taxpayer about how to be compliant in the future.

**NOTE:** If RCA does not offer FTA relief because the FTD penalty was charged for EFTPS Avoidance, FTA relief can still be granted for the FTF and/or FTP penalties, if applicable.

- a. Penalty relief under the FTA provision **does not** apply to:
  - o Returns with an event-based filing requirement, such as Form 706, *U.S. Estate Tax Return*, and Form 709, *United States Gift (and Generation - Skipping Transfer) Tax Return*
  - o The Daily Delinquency Penalty (DDP)
  - o Form 1120, *U.S. Corporation Income Tax Return*/Form 1120S, *U.S. Income Tax Return for an S Corporation* if, in the prior 3 years, at least 1 Form 1120S was filed late but not penalized
  - o Information reporting that is dependent on another filing, such as various forms that are attached

**NOTE:** This list is not all-inclusive.

9. If the tax is not paid in full on the tax period when the request for abatement is received and the taxpayer is current with installment agreement payments, allow first-time abate/clean compliance history on the failure to pay (FTP) penalty amount assessed. Use **RC 062** with the TC 271 and **PRC 018** or **020**. This will allow the FTP penalty to start up when the TC 271 posts to Master File on the remaining tax due. While the first-time abatement is due to an administrative waiver, not reasonable cause, the **RC 062** will not restrict the tax period and is to be used in this instance only. The proper use of the PRC will allow for the tracking of first-time/compliance history abatements.

**NOTE: The employee will need to use the open paragraph in the 3502C or 3503C letter to inform the taxpayer that the FTP penalty will start accruing again on the unpaid taxes and will continue until the tax is paid in full. After the tax is paid in full, the taxpayer may request abatement of the additional FTP penalty. Use PRC 018 or 020.**

10. If the tax is fully paid, the First-time Abate/Clean Compliance History adjustment to the FTP (TC 271) may be done using **RC 065** (IMF Accounts) with **PRC 018**

or **020** as the restrictive action will not have a negative effect. Adjustment notices will be sent in both abatement instances.

11. RCA will also display a First-time Abate window on a BMF account when the taxpayer has a change in deposit frequency. Employees need to be aware this is different than a First-time Abate for a good compliance history and use the appropriate PRC when removing the penalty for a first-time change in deposit frequency.